INDEX

	Page
Opinions below	1
Jurisdiction	1
Questions presented	2
Statutes involved	3
Statement	3
Specification of errors to be urged	11
Summary of Argument	13
Argument	15
I. The waivers executed by the respondent were sufficient by themselves to extend the statutory period for assessment	17
II. The earlier waivers executed in the name of the Chemical Company were likewise binding on the respondent and extended the period for assessment so that the statute had not run when the deficiency notice was sent	25
Conclusion	39
Appendix	40

CITATIONS

Cases:

Aiken v. *Burnet*, 282 U.S. 277	23
Aldridge v. *United States*, 64 C.Cls. 424	35
Bigelow v. *Forrest*, 9 Wall. 339	38
Brown & Sons Co. v. *Burnet*, 282 U.S. 283	18, 20, 23
Burnet v. *Harmel*, 287 U.S. 103	36
Burnet v. *Railway Equipment Co.*, 282 U.S. 295	20
California Iron Yards Co. v. *Commissioner*, 47 F. (2d) 514	36
Colonial Trust Co. v. *United States*, 55 F. (2d) 512, certiorari denied, 286 U.S. 560	35
Concrete Engineering Co. v. *Commissioner*, 58 F. (2d) 566	36
Cushman v. *Warren-Scharf Asphalt Paving Co.*, 220 Fed. 857, certiorari denied, 238 U.S. 621	38
Davis v. *United States*, 27 F. (2d) 630	35
Dodge v. *Commissioner*, 13 B.T.A. 201	35
Elston v. *Elston & Co.*, 131 Maine 149	39
Frost v. *Commissioner*, 23 B.T.A. 411	24
Glover v. *Brown*, 32 Idaho 426	38
Heiman Grocery Co. v. *Crooks*, 44 F. (2d) 854, appeal dismissed, 50 F. (2d) 1077	33

Cases—Continued. Page

Helvering v. *Oswego & Syracuse R. Co.*, No. 21, October Term, 1933 ..... 13, 21
Helvering v. *United States Refractories Corp.*, No. 20, October Term, 1933 ..... 14, 24
In re Wolf Mfg. Industries, 56 F. (2d) 64 ..... 20, 39
Liberty Baking Co. v. *Heiner*, 37 F. (2d) 703 33
Loewer Realty Co. v. *Anderson*, 31 F. (2d) 268 33
Lucas v. *Hunt*, 45 F. (2d) 781 ..... 20, 32
McDonnell v. *United States*, 288 U.S. 420 20
Monarch Mills v. *Jones*, 59 F. (2d) 502 ..... 32, 36
Old Wayne Life Assn. v. *McDonough*, 204 U.S. 8 38
Phillips v. *Lyman H. Howe Films Co.*, 33 F. (2d) 891 ..... 19, 32
Pictorial Printing Co. v. *Commissioner*, 38 F. (2d) 563 24
R. H. Stearns Co. v. *United States*, No. 133, October Term 1933, decided January 8, 1934 24
Sache v. *Wallace*, 101 Minn. 169 38
Simon v. *Southern Railway*, 236 U.S. 115 38
Stange v. *United States*, 282 U.S. 270 ..... 19, 20
Thompson v. *Whitman*, 18 Wall. 457 38
Trustees for Ohio and Big Sandy Coal Co. v. *Commissioner*, 43 F. (2d) 782 33
United States v. *Walker*, 109 U.S. 258 38
Warner Colliers Co. v. *United States*, 63 F. (2d) 34 ..... 20, 32, 33
Williamson v. *Berry*, 8 How. 495 38
Windsor v. *McVeigh*, 93 U.S. 274 38

Statutes:

Revenue Act of 1926, c. 27, 44 Stat. 9:
Sec. 274 (U.S.C.App., Title 26, Sec. 1048) 40
Sec. 277 (U.S.C.App., Title 26, Sec. 1057) 40
Sec. 278 (U.S.C.App., Title 26, Sec. 1060) 41
Sec. 280 (U.S.C.App., Title 26, Sec. 1069) 42
Sec. 283 (U.S.C.App., Title 26, Sec. 1064) 43
Sec. 1106 (U.S.C.App., Title 26, Sec. 1249) 44
Revenue Act of 1928, c. 852, 45 Stat. 791, 875, Sec. 612 44
Revised Statutes of Maine (1916), c. 51, Secs. 81, 89, 90, 101 44–45

Miscellaneous:

Mim. 3085, II-1 Cumulative Bulletin 174 25

In the Supreme Court of the United States

OCTOBER TERM, 1933

No. 515

GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE, petitioner

v.

THE NEWPORT COMPANY

ON A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE PETITIONER

OPINIONS BELOW

The opinion of the Circuit Court of Appeals (R. 159–164) is reported in 65 F. (2d) 925. The opinion of the Board of Tax Appeals (R. 126–143) is reported in 22 B.T.A. 833.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered July 8, 1933. (R. 164.) A petition for a writ of certiorari was filed on October 7, 1933, and was granted November 20, 1933. (R. 166.) The jurisdiction of this Court rests on Section 240

(a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED

1. Respondent, who was liable as transferee of the assets of another corporation, executed after the enactment of the Revenue Act of 1926 an instrument stating that the transferor waives the statutory period for making assessment of its tax liability. The instrument was signed by respondent as "taxpayer" and "as successor in interest" of the transferor. If certain other waivers executed in the name of the transferor after its dissolution should be held invalid, the statute had run before the execution of this waiver. The questions are:

(a) Whether the instrument may be construed as a waiver of the statute of limitations as against the respondent.

(b) Whether a waiver executed after the expiration of the statutory period of assessment and after the enactment of Section 1106 of the Revenue Act of 1926, but prior to the effective date of the Revenue Act of 1928, is valid.

2. Whether an informal waiver of the statute of limitations contained in a protest purporting to be made on behalf of the respondent's transferor, verified by the respondent's president and filed with the petitioner by the respondent, is effective to extend the statutory period for making assessment against the respondent.

3. Whether the respondent is estopped to deny the validity of several waivers executed in the name of its transferor extending from time to time the period of limitations for making assessment of the transferor's tax liability.

4. Whether the decree of the Supreme Judicial Court of Maine, dissolving the transferor is void and, if so, whether it may be attacked in the present proceeding.

STATUTES INVOLVED

The statutes involved are set forth in the Appendix, *infra*, pp. 40–45.

STATEMENT

The respondent is a Delaware corporation formed in 1919, with its principal place of business in Wisconsin. The Newport Chemical Works, Inc. (hereafter called the Chemical Company), was a Maine corporation, with a factory and offices in Wisconsin. (R. 128.) On April 1, 1918, the Chemical Company filed its income tax and excess-profits tax returns for 1917, showing an income tax liability of $18,405.65, and an excess-profits tax liability of $12,892.03. (R. 128, 18.)

In the middle of the year 1919 the Chemical Company transferred all of its assets to the respondent in consideration of the issuance by the respondent of its stock to the stockholders of the Chemical Company. In connection with the transfer and as part of the consideration, the respondent assumed all of the liabilities of the Chemical Com-

pany. The assets received by the respondent exceeded in value the amount of tax claimed in this proceeding. (R. 129.)

On March 1, 1920, the Supreme Judicial Court of Maine entered a decree dissolving the Chemical Company without the appointment of a trustee or receiver. (R. 129.) The decree recited that the cause was heard on bill and answer and that it appeared that the defendant company had no debts and no assets. (R. 21.) The stockholders' bill specifically alleged "That there are existing liabilities against said corporation and no existing assets thereof, requiring distribution among the stockholders." (R. 19.) The answer admitted the averments of the bill. (R. 20.) On the same day a decree was entered dissolving the Newport Mining Company, which was affiliated with the Chemical Company. (R. 129, 21.)

On April 14, 1920, the respondent filed with the Collector of Internal Revenue at Milwaukee, Wisconsin, an affiliated corporation questionnaire for the year 1919, which stated that certain companies of the affiliated group, including the Chemical Company and the Newport Mining Company, were in process of dissolution during 1919. The questionnaire stated that the respondent as principal or parent, the Newport Mining Company, the Chemical Company and certain other companies were controlled or owned directly or indirectly by Ferdinand Schlesinger, Mathilda Schlesinger, his wife, Armin A. Schlesinger, his son, Henry J. Schles-

inger, his son, and Gertrude MacLaren, his daughter, and that the Schlesingers personally directed the central organization conducting the business in all its activities. (R. 129–130.)[1]

On March 8, 1921, an income and profits tax return of the Chemical Company for the year 1920 was filed with the Collector of Internal Revenue at Milwaukee, Wisconsin, which showed no income and contained the statement "Not active. Dissolved March 1, 1920. Transacted no business whatsoever during year." An accompanying letter from the Chemical Company stated (R. 129):

> You will note that the company did not operate during the year and hence no net income earned. You will further note that the company's affairs have been wound up and the company legally dissolved.

The Commissioner also received notice from the respondent in 1922 that the Chemical Company had been dissolved in 1920. (R. 74, 130.)

The statutory period of limitation for assessment and collection of taxes of the Chemical Company for the year 1917 expired on April 1, 1923, five years after the return for that year had been filed. Whether this period was extended so as to make valid the asessment of the tax involved in this case depends on the validity and effect of several waivers.

---

[1] The final board of directors of the Chemical Company and the first board of directors of the respondent were substantially identical (R. 25–26).

On December 15, 1920, the Chemical Company, by Edward G. Wilmer, vice president, executed an unlimited waiver of the statute of limitations with respect to 1917 taxes. (R. 130–131.)[2] On August 13, 1923, the Commissioner notified the Newport Mining Company of a determination of additional taxes for 1917 against the Company and its affiliates, including a tax of $116,065.49 against the Chemical Company. (R. 137, 39–45.) The Newport Mining Company, by Charles F. Fawsett, its general counsel, in October, 1923, filed an appeal in behalf of itself and its affiliates, requesting a redetermination, which concludes with the following statement (R. 137):

> This appeal is taken by the Newport Mining Company for and in behalf of each of the subsidiary and affiliated companies named in said letter of the Department of August 13, 1923, as well as on its own behalf, and it is duly authorized to take such appeal.
>
> (Signed) THE NEWPORT MINING COMPANY,
> By CHARLES FAWSETT,
> *General Counsel.*

The appeal was verified by H. H. Springford, who averred that he was secretary of the Newport Mining Company until its dissolution in 1920; that he was vice president of the respondent and presi-

[2] On April 11, 1923, the Commissioner issued Mimeograph 3085, stating that all unlimited assessment waivers for the year 1917 would be held to expire April 1, 1924. II-1 Cumulative Bulletin 174.

dent of the Steel & Tube Company of America, between which two companies the stock and assets of the Newport Mining Company had been divided prior to its dissolution; and that he made the verification in his capacity as vice president of the respondent and in the other capacities mentioned and was authorized to do so. (R. 38–39.) Fawsett, who signed the appeal for the Newport Mining Company, was counsel for the respondent after the Chemical Company was dissolved (R. 27) and as such passed only upon matters referred specially to him (R. 28).

On February 11, 1924, the Commissioner wrote to the Newport Mining Company enclosing forms of waiver for several companies, including the Chemical Company, stating that the statute of limitations would expire April 1, 1924, and the Bureau would need more time for careful consideration of the case. (R. 131, 75–76.) In reply, the Commissioner received a letter from C. W. Westerman, Secretary of the Newport Company, dated February 23, 1924, enclosing a number of waivers, including a waiver of the Chemical Company, signed by H. J. Schlesinger, vice president, extending for one year the time for collecting 1917 taxes. (R. 132, 56–57, 63.)

On December 3, 1924, the Commissioner notified the Chemical Company of a tentative determination of a deficiency for 1917 of $226,710.08. (R. 137, 46–48.) On December 26, 1924, Fawsett, as

general counsel of the Chemical Company and certain other companies, wrote to the Commissioner enclosing waivers including one for 1917, signed by the Chemical Company by H. J. Schlesinger, vice president, extending the time for making assessment to April 1, 1926. (R. 52; 133.) Also enclosed with the letter was a protest on behalf of the Newport Mining Company and another company which protested against the determination that the Chemical Company was not affiliated with them. The protest contains the following statement (R. 138):

> The taxpayers hereby place upon record their willingness to file all required waivers to permit of the final determination of the above exceptions before the expiration of any period of limitation provided by law and will forthwith transmit such waivers to be filed in connection herewith as soon as the same can be prepared and properly executed.

The protest was verified by A. A. Schlesinger, who averred that he was vice president and treasurer of the Chemical Company during the tax years in question (1917 and 1918), and was an officer of the other companies mentioned; that he was and is familiar with their affairs and authorized to make the verification. (R. 138, 48–52.)

On December 14, 1925, the Commissioner addressed a 30-day notice to the Chemical Company of a tentative determination of a deficiency of $211,227.75. The notice contained a statement that

"1917 waiver filed Dec. 31, 1924 is in effect until April 1, 1926." (R. 138, 53–54.) On January 11, 1926, a protest, executed January 8, 1926, on behalf of the Chemical Company against this determination was filed by A. A. Schlesinger, which contains the following statement (R. 138–139, 58–60):

> The taxpayer hereby places on record its willingness to file all required waivers to permit of the final determination of the above exceptions before the expiration of any period of limitation provided by law and will forthwith transmit such waivers to be filed in connection herewith as soon as the same can be prepared and properly executed, and in the meantime and pending the receipt of such formal waivers, it agrees that this offer and agreement shall operate and have the full force and effect of such formal waivers in all respects as though the same were filed herewith.

This protest was sworn to by A. A. Schlesinger in the following form (R. 60, 139):

> A. A. SCHLESINGER being first duly sworn says that he was during the year 1917 the vice-president and treasurer of the Newport Chemical Works, Inc., and continued as such until May 1919, and thereafter was the president of the company until its dissolution in the year 1920.
>
> That prior to the dissolution of said company all of its assets and property was transferred to and taken over by the Newport Company, a corporation organized un-

der the laws of Delaware which in consideration thereof assumed and agreed to pay all of the liabilities of said Newport Chemical Works, Inc. and said Newport Company has ever since continued to be the owner of all of such property and assets in so far as the same have been preserved or are still in existence. That this affiant is now president of the Newport Company and is in active charge, management and direction of its affairs.

That he has read the foregoing protest and exceptions and that the same are true to the best of his knowledge, information and belief.

[Signed] A. A. SCHLESINGER.

On January 12, 1926, a waiver of time for the assessment of 1917 taxes was signed in the name of the Chemical Company by H. J. Schlesinger, vice president, and filed with the Commissioner January 20, 1926. This waiver was in terms effective until December 31, 1926. (R. 134.)

On November 6, 1926, a waiver extending the period for assessment of the 1917 taxes to December 31, 1927, was executed by the respondent, by A. A. Schlesinger, president. Under the name of the respondent appears the word "taxpayer" and below the signature the following words appear "As successors in Interest to the Newport Chemical Works." (R. 135.)

On March 14, 1927, the Commissioner mailed to the respondent a 60-day notice proposing to assess,

under Section 280 of the Revenue Act of 1926, against the respondent as transferee of the Chemical Company, a liability of $43,527.25 for income and profits taxes of the latter company for 1917. (R. 137.) The respondent appealed from the Commissioner's determination to the Board of Tax Appeals.

The Board held that assessment and collection of the tax against the Chemical Company were barred after April 1, 1924, and that the subsequent waivers were void because the Chemical Company had been dissolved; that since assessment and collection against the transferor, the Chemical Company, were barred prior to the passage of the Revenue Act of 1926, assessment and collection of the liability of the respondent as transferee was also barred. (R. 143.) On appeal, the Circuit Court of Appeals sustained the Board.

SPECIFICATION OF ERRORS TO BE URGED

The Circuit Court of Appeals erred:

1. In failing to hold that the waiver dated November 6, 1926, signed by the respondent as "taxpayer" and as successor in interest to the Newport Chemical Works, Inc., was sufficient to extend the period of limitations for assessment and collection of the liability of the respondent as transferee and successor in interest of the Newport Chemical Works, Inc., for the deficiency in tax of the latter company for the year 1917.

2. In failing to hold that the waiver dated November 6, 1926, signed by the respondent as "taxpayer" and as successor in interest to the Newport Chemical Works, Inc., together with the informal waiver incorporated in the protest executed and verified under date of January 8, 1926, signed and sworn to by A. A. Schlesinger, president of respondent, were sufficient to extend the period of limitations for assessment and collection of the liability of respondent as transferee and successor in interest of the Newport Chemical Works, Inc., for the deficiency in tax of the latter company for the year 1917.

3. In holding that the decree of the Supreme Judicial Court of Maine dated March 1, 1920, was valid and effective to dissolve the Newport Chemical Works, Inc.

4. In failing to hold that the decree of the Supreme Judicial Court of Maine dated March 1, 1920, was void, and subject to collateral attack in this proceeding.

5. In failing to hold, upon the facts found, that the Newport Company is estopped to deny the validity of the several waivers set out in the findings of fact executed in the name of the Newport Chemical Works, Inc.

6. In holding that the assessment and collection of the liability of the respondent for taxes imposed upon the Newport Chemical Works, Inc., were barred by the statute of limitations.

7. In failing to hold that respondent was liable under Section 280 of the Revenue Act of 1926 for any deficiency in income tax due from the Newport Chemical Works, Inc., for the taxable year 1917.

SUMMARY OF ARGUMENT

I

The assessment and collection of the taxes from the respondent as a transferee of the Newport Chemical Works, Inc., are not barred by the statute of limitations. The waivers filed by respondent as transferee were alone sufficient to extend the time. The waiver of November 6, 1926, signed by the respondent as "taxpayer" and as "successor in Interest to the Newport Chemical Works" was obviously intended to extend the period for the assessment of the respondent's transferee liability. It extended the time to December 31, 1927, within which time the deficiency notice was sent and this appeal was taken. A waiver given after the statute has run is not void. The waiver was sufficient, standing alone, unless made ineffective by Section 1106 (a) of the Revenue Act of 1926. The Government's argument with respect to the effect of that section and its retroactive repeal by Section 612 of the 1928 Act is fully treated in the Government's brief in *Helvering* v. *Oswego & Syracuse Railroad Co.,* No. 21, present term, to which the Court is respectfully referred.

The question of whether Section 1106 (a) of the 1926 Act extinguished the liability becomes material only in case it should be held that assessment of the tax was barred prior to the execution of the waiver of November 6, 1926. The informal waiver contained in a protest filed with the Commissioner on January 11, 1926, was effective to extend the period until the waiver of November 6, 1926, was executed, so that Section 1106 (a) never became operative. This informal waiver evidenced the intention of the respondent to waive any limitation for assessment of the tax against itself. The fact that it was informal and did not specify a time limit did not invalidate it. It was an effective waiver unless the Commissioner's signature is necessary. The Government's argument on that question is fully treated in the Government's brief in *Helvering* v. *United States Refractories Corp.*, No. 20, present term.

II

The earlier waivers signed in the name of the Chemical Company by H. J. Schlesinger, its vice-president, were also effective to extend the time. The respondent through its officers and agents procured the waivers and participated in their execution and filing. The respondent was liable for the tax and the extension was for its benefit. Therefore, the waivers should be deemed the acts of the respondent and should be held to bind the respondent. Considered in conjunction with the transferee waiver of November 6, 1926, they extended

the time in an unbroken chain to December 31, 1927, within which time the notice was sent.

Moreover, respondent, having filed these waivers for the purpose of extending the time in order that various protests which it had caused to be filed might be fully considered by the Commissioner and having received a substantial reduction in the proposed tax by virtue of this extension and reconsideration, is now estopped to deny the validity of the waivers.

The decree of the Maine court dissolving the Chemical Company was void because it was entered on a record showing existing liabilities whereas, the state statute makes it a condition precedent to such a decree that there be no existing liabilities. The decree, being void, the Chemical Company continued in existence, at least for the purpose of executing the waivers in question. Such waivers extended the time to December 31, 1926, so that the deficiency notice mailed to the respondent as transferee within one year thereafter was timely.

ARGUMENT

There is no question here as to the *amount* of the deficiency in taxes of the Newport Chemical Works, Inc. (hereafter called the Chemical Company), for the year 1917.[3] Nor is there any question as to the

[3] While the deficiency notice asserted a liability of $43,527.25 (R. 9), the Commissioner has conceded that the amount of the Chemical Company's taxable income should be decreased by an allowance of a deduction of $11,335.69 for the year 1917 (R. 127, 140).

liability of the respondent as a transferee for this deficiency. The sole issue presented is whether the assessment of the admitted liability of the respondent as transferee is barred by the statute of limitations.

The income and profits tax return of the Chemical Company for the year 1917 was filed April 1, 1918. (R. 128.) In the absence of valid waivers the five-year period for assessment as against the Chemical Company expired on April 1, 1923. Sec. 277 (a) (3) of the Revenue Act of 1926 (*infra*, p. 41). Under Section 280 (b) (1) of the 1926 Act (*infra*, p. 42), the period of limitation for assessment of a transferee's liability is one year after the expiration of the period of limitations against the transferor. So, in the absence of valid waivers the period for assessment against the respondent expired on April 1, 1924.

The deficiency notice in this case was not mailed until March 14, 1927. (R. 137.) However, a series of waivers was filed, which, we contend, was effective to extend the period for assessment until December 31, 1927. These waivers may be conveniently classified into two groups: (1) a series of waivers, executed in the name of the Chemical Company after its dissolution, which in terms extended the period for assessment to December 31, 1926; and (2) two waivers signed by the respondent itself, these being (a) an informal waiver filed by the respondent on January 11, 1926, agreeing to extend

the period for assessment until formal waivers were filed, and (b) a formal waiver executed by the respondent on November 6, 1926, extending the statutory period to December 31, 1927. The court below held that waivers executed after the Chemical Company had ceased to exist were void, and made no distinction between those waivers executed in the name of the Chemical Company and those executed by the respondent as transferee. We contend that all of these waivers were binding on the respondent and served to extend the statutory period from time to time so that assessment was not barred when the deficiency notice was mailed.

The waivers executed by the respondent itself will be considered first. If we are right in our contention that these waivers were sufficient by themselves to extend the period, then we need not rely on the earlier waivers executed in the name of the Chemical Company.

I

THE WAIVERS EXECUTED BY THE RESPONDENT WERE SUFFICIENT BY THEMSELVES TO EXTEND THE STATUTORY PERIOD FOR ASSESSMENT

Our first contention is that the last waiver, that of November 6, 1926, was itself sufficient to extend the time for assessment. This waiver by its terms remained in effect until December 31, 1927. (R. 62, 135.) Prior to that date (on March 14, 1927), the deficiency notice was sent and this appeal

was taken. Therefore, if this waiver was valid, it alone served to extend the period for assessment until the date of the deficiency notice and the assessment of the tax is not now barred.[4]

It seems clear that this was a valid waiver by the respondent. It expressly waived "the time prescribed by law for making any assessment of the amount of income, excess-profits, or war-profits taxes due under any return made by or on behalf of said taxpayer [Newport Chemical Works] for the years 1917 * * *". (R. 62, 135.) It was signed by the respondent as "taxpayer" and "as successor in Interest to the Newport Chemical Works," and was executed by A. A. Schlesinger, president of the respondent. It bore the corporate seal of the respondent. (R. 62.) The obvious purpose of this waiver was to extend the statutory period for assessment and collection of the respondent's liability as transferee. The fact that the instrument stated that "Newport Chemical Works" hereby waives the time prescribed by law for making assessment

[4] The waiver expressly provided that if a deficiency notice was sent prior to December 31, 1927, and an appeal to the Board of Tax Appeals was taken therefrom, the time for assessment should be further extended by the number of days between the date of the mailing of the notice and the date of the final decision by the Board. (R. 62.) Aside from this, the appeal to the Board under Section 283 (a) of the 1926 Act (*infra*, p. 43), served as a stay of the statute until the decision of the Board becomes final, and for sixty days thereafter. See Section 274 (a) and Section 277 (b) of the Revenue Act of 1926 (*infra*, pp. 40, 41); *Brown & Sons Co.* v. *Burnet*, 282 U.S. 283.

does not mean that the waiver was any the less the act of the respondent. The respondent had been organized to take over the business formerly carried on by the Chemical Company. It had acquired all of its assets and assumed all of its liabilities. The respondent's stockholders had been stockholders in the Chemical Company. (R. 128–129.) The respondent was liable for the tax and was the party directly interested in securing an extension of the statutory period in order that a protest that it had previously filed might receive due consideration. (R. 60, 139.) Under the respondent's own theory the Chemical Company was dissolved and was unable to execute a waiver. Consequently, a waiver executed by the respondent as the "taxpayer" and as "successor in Interest to the Newport Chemical Works" must have been intended as a waiver of the period for the assessment of the respondent's transferee liability. "It must be assumed that an effective and not a futile act was intended." *Stange* v. *United States,* 282 U.S. 270, 277.

The courts have held that a transferee is bound by a waiver executed by it in the name of the transferor. Thus in *Phillips* v. *Lyman H. Howe Films Co.,* 33 F. (2d) 891 (C.C.A. 3d), a corporation formed through the consolidation and merger of two other corporations signed a waiver on behalf of one of the predecessor corporations extending the time for making assessments against the latter.

The court held that the waiver was effective to extend the period of limitations, thus permitting the consolidated corporation to maintain an action for refund of an overpayment of tax by the predecessor. See also *Warner Collieries Co.* v. *United States*, 63 F. (2d) 34 (C.C.A. 6th); *Lucas* v. *Hunt*, 45 F. (2d) 781 (C.C.A. 5th); *In re Wolf Mfg. Industries*, 56 F. (2d) 64, 67 (C.C.A. 7th).

Whether the waiver in this case should be construed as a waiver of the time for assessment against the Chemical Company, or against the respondent as transferee and obligor, seems unimportant, since the deficiency was asserted against the respondent within the time as extended by the terms of the waiver. The mere fact that the waiver was given after the statute had run is immaterial,[5] for it is settled that waivers executed after the running of the statute of limitations are not for that reason invalid. See *McDonnell* v. *United States*, 288 U.S. 420; *Stange* v. *United States*, 282 U.S. 270, *supra*; *Brown & Sons Co.* v. *Burnet*, 282 U.S. 283, *supra*; *Burnet* v. *Railway Equipment Co.*, 282 U.S. 295.

Unless this waiver is made ineffective by the provisions of Section 1106 (a) of the Revenue Act

[5] This statement is made on the assumption that the earlier waivers above referred to were void. We contend later, however, that they were valid and extended the statutory period from time to time so that assessment was not barred at the time the waiver of November 6, 1926, was executed.

of 1926 (*infra*, p. 44), we contend that there is no reason why it should not be given the effect it obviously was intended to accomplish. That section provides that the bar of the statute shall operate to extinguish the liability as well as bar the remedy; but this provision was repealed as of the date of its enactment by Section 612 of the Revenue Act of 1928 (*infra*, p. 44). The Government's argument with respect to the effect of Section 1106 (a) and its retroactive repeal is fully treated in the Government's brief in *Helvering* v. *Oswego & Syracuse R. Co.*, No. 21, present term. For the reasons there stated we submit that the waiver of November 6, 1926, is sufficient of itself to extend the period of limitations. The decision of the Circuit Court of Appeals for the Second Circuit in that case (62 F. (2d) 518) was affirmed by this Court on October 23, 1933, but by an equally divided court.

If the Court should hold that the waiver of November 6, 1926, standing alone, is ineffective because of Section 1106 (a) of the 1926 Act, then we rely on the informal waiver of January 11, 1926. This waiver was given prior to the effective date of the 1926 Act (February 26, 1926). Therefore, if this waiver was valid and effective to extend the period to November 6, 1926, when the formal waiver was given, then Section 1106 (a) never became operative.

This waiver of January 11, 1926, was an informal waiver, attached to a "Protest of the Newport Chemical Works, Inc." (R. 58–60.) The Commissioner under date of December 14, 1925, had proposed an additional tax against the Chemical Company for the year 1917 in the amount of $211,227.75. (R. 53.) A protest was filed in the name of the Chemical Company, requesting a re-determination and asking for a conference. (R. 58–59.) The following statement was incorporated in the protest (R. 60):

> WAIVERS TO BE FURNISHED
>
> The taxpayer hereby places on record its willingness to file all required waivers to permit of the final determination of the above exceptions before the expiration of any period of limitation provided by law, and will forthwith transmit such waivers to be filed in connection herewith as soon as the same can be prepared and properly executed, and in the meantime and pending the receipt of such formal waivers, it agrees that this offer and agreement shall operate and have the full force and effect of such formal waivers in all respects as though the same were filed herewith.

Attached to the protest was an affidavit of the respondent's president (R. 60) the text of which has been set out above (*supra*, pp. 9–10).

This offer to supply formal waivers and the statement that "this offer and agreement shall operate

and have the full force and effect of such formal waivers in all respects as though the same were filed herewith" must be taken as the act of the respondent. The affidavit attached to the protest shows plainly that the respondent itself was the active party in making the protest. The affidavit was executed by the respondent's president and contained the statement that the Chemical Company had been dissolved and that the respondent had acquired all of that company's assets and had assumed its liabilities. As stated above, the respondent was admittedly liable for the tax and was primarily interested in having the period for assessment extended in order that the protest against the additional tax might receive further consideration by the Commissioner. The waiver and protest accomplished the purpose sought in that the proposed tax was reduced from $211,227.75 (R. 53) to $43,527.25, the amount eventually determined in the deficiency notice (R. 9). We submit the affidavit of the respondent's president clearly indicates that the instrument was the act of the respondent and the purpose was to extend the time for the assessment of the respondent's transferee liability until the formal waiver of November 6, 1926, was filed.

The fact that the waiver was informal did not invalidate it. The statute does not prescribe the form of waivers, nor is statutory authority necessary to make a valid waiver. See *Aiken* v. *Burnet*, 282 U.S. 277; *Brown & Sons Co.* v. *Burnet*, 282

U.S. 283, *supra*. Nor did the fact that no time limit was specified invalidate the waiver. It bound the respondent at least for a reasonable time (*Pictorial Printing Co.* v. *Commissioner*, 38 F. (2d) 563 (C.C.A. 7th); *Frost* v. *Commissioner*, 23 B.T.A. 411, 416), and we submit that the ten months' period between the informal and formal waivers was reasonable.[6]

Unless the Commissioner's signature is necessary to the validity of a waiver, this informal waiver was, we contend, sufficient to extend the period for assessment until November 6, 1926, when the formal waiver was given, and for that reason Section 1106 (a) of the 1926 Act never became operative. The question of the necessity for the Commissioner's signature to validate a waiver is fully treated in the Government's brief in *Helvering* v. *United States Refractories Corp.*, No. 20, present term.[7] For the reason there stated, we respectfully urge that the failure of the Commissioner to sign did not invalidate the waiver.

We submit the waivers executed by the respondent were by themselves sufficient to extend the statutory period for assessment.

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[6] Under Bureau practice, most waivers run for a period of one year.

[7] The decision of the Circuit Court of Appeals in that case (64 F. (2d) 69) was affirmed by this Court on October 23, 1933, but by an equally divided court. The same question was also presented, but not decided, in *R. H. Stearns Co.* v. *United States*, No. 133, October Term, 1933, decided January 8, 1934.

II

THE EARLIER WAIVERS EXECUTED IN THE NAME OF THE CHEMICAL COMPANY WERE LIKEWISE BINDING ON THE RESPONDENT AND EXTENDED THE PERIOD FOR ASSESSMENT SO THAT THE STATUTE HAD NOT RUN WHEN THE DEFICIENCY NOTICE WAS SENT

Even if the Court should hold that the waivers executed by the respondent were not alone sufficient, then the Government relies on the series of waivers filed on behalf of the Chemical Company and executed by H. J. Schlesinger, its vice president. These waivers extended the statutory period to December 31, 1926. If construed as valid waivers of the Chemical Company, they extended the period for assessment against the transferor to a date less than one year prior to the deficiency notice, so that notice to the transferee was timely under Section 280 (b) (1) of the 1926 Act, (*infra*, p. 42). If construed as valid waivers binding on the respondent, they served to extend the period for assessment against the respondent so that the time had not expired when the last waiver of November 6, 1926, was given. These waivers were: (1) the unlimited waiver of December 15, 1920 (R. 55), expiring by order of the Commissioner on April 1, 1924 (Mim. 3085, II-1 Cumulative Bulletin 174); (2) the waiver filed February 26, 1924, extending the period for one year after the expiration of the waiver already on file or until April 1, 1925 (R. 132, 56–57); (3) the waiver of December 23,

1924, extending the period for one year after the expiration of any waiver on file or until April 1, 1926 (R. 132–133, 57–58); and (4) the waiver of January 12, 1926, extending the period to December 31, 1926. (R. 134, 61.)

The first of these waivers is concededly valid. On March 1, 1920, the Supreme Judicial Court of Maine entered its decree dissolving the Chemical Company. (R. 21.) Under Section 81 of the Revised Statutes of Maine (*infra*, p. 44), corporations whose charters expire or are otherwise terminated have a corporate existence for three years thereafter to settle their affairs. Thus, the court below recognized that the Chemical Company's first waiver, executed prior to the expiration of the three-year period, was valid. (R. 163.) However, the court held that the other waivers executed after the Chemical Company had ceased to exist were void. (R. 164.)

But even if the decree of the Maine court was valid and effected a dissolution of the Chemical Company so that three years thereafter it was incapable of executing waivers, still, we contend, this is not sufficient to establish that the waivers were of no effect. The record shows that through its officers and agents *the respondent* participated in procuring and filing these waivers, and under the circumstances we contend that the waivers, though executed in the name of the Chemical Company, should be held binding on the respondent, extend-

ing the period for the assessment of the respondent's transferee liability.

The respondent was the transferee of all the assets of the Chemical Company and it expressly assumed all the latter company liabilities. Both corporations were owned or controlled by the same individuals, all members of the Schlesinger family. (R. 34, 129–130.) In consideration of the transfer of the assets, the respondent issued its stock to the stockholders of the Chemical Company. (R. 129.) The members of the first board of directors of the respondent were also members of the last board of directors of the Chemical Company. (R. 25–26.) Thus there was a substantial identity in the two organizations.

The two companies together with some other affiliated corporations maintained common offices in a building in the City of Milwaukee. (R. 139.) Mail addressed to the Chemical Company after the decree of dissolution was taken in by the respondent as its successor in interest. (R. 31.)

The Newport Mining Company, another corporation controlled by the Schlesinger family (R. 129), was affiliated with the Newport Chemical Company (R. 128). The Newport Mining Company had been dissolved on March 1, 1920 (R. 21), and prior to its dissolution all of its assets were divided between the Steel and Tube Company of America and the resp ndent (R. 38). On or about August 7, 1923, the Commissioner notified the New-

port Mining Company, as parent, of a proposed deficiency against the Chemical Company in the amount of $116,065.49. (R. 39–45.) A protest against this determination was filed on behalf of the Newport Mining Company and the Chemical Company by Charles Fawsett, as general counsel of the Newport Mining Company. (R. 36–37.) Mr. Fawsett was counsel for the respondent. (R. 27.) He, together with others, was given powers of attorney by the respondent under dates of September 5, 1923, and January 30, 1925, to represent the respondent with respect to the tax liability of the Chemical Company. (R. 32–33.) The above protest signed by Mr. Fawsett was verified by H. H. Springford in his capacity as vice president of the respondent as well as a former officer of the Newport Mining Company. (R. 38.) Shortly prior to the filing of this protest H. J. Schlesinger, as vice president of the Mining Company, wrote the Commissioner under date of August 28, 1923, asking for a conference in connection with the proposed tax. It is significant that this letter was written on the respondent's letterhead. (R. 45–46.) From these facts it is evident that at this time the respondent was taking an active interest in the tax liability of its predecessor, the Chemical Company.

While the protest was being considered, the Commissioner under date of February 11, 1924, wrote the Mining Company asking for waivers. (R. 75–76.) In reply to this request the respondent's

secretary, C. W. Westerman, under the respondent's letterhead on February 23, 1924, sent the Commissioner waivers for all the affiliated companies, including one for the Chemical Company. (R. 63.) On February 26, 1924 the Commissioner received a 1917 waiver signed on behalf of the Chemical Company by H. J. Schlesinger as vice president. (R. 132, 56–57.) In view of the date of its receipt, there can be little doubt that this waiver was one of those mailed to the Commissioner by the respondent's secretary. This waiver, therefore, was one procured by and signed with the assent of the respondent. In view of the Commissioner's statement contained in his letter of February 11, 1924, that the period of limitations would expire April 1, 1924,[8] and that without an extension there would be insufficient time for careful consideration of the protest, it seems apparent that the waiver was given for the benefit of the respondent. This waiver extended the period to April 1, 1925.

Prior to the expiration of this waiver, the Commissioner on December 3, 1924, advised the Chemical Company (and it is to be remembered that the respondent received all mail addressed to the Chemical Company) of a tentative determination of a deficiency in the amount of $226,710.08. (R. 46–48.) A protest against this determination together with a new 1917 waiver of the Chemical

[8] It will be recalled that the unlimited waiver of December 15, 1920 (R. 55), which was concededly valid, expired April 1, 1924.

Company was mailed to the Commissioner on December 26, 1924, by Charles F. Fawsett, who signed as general counsel for the Chemical Company as well as numerous other companies mentioned in the letter. This letter was received in the Consolidated Returns Audit Division of the Bureau on December 31, 1924. (R. 52.) On the same date there was received in the same division a 1917 waiver filed on behalf of the Chemical Company by H. J. Schlesinger, vice president. (R. 132–133.) It is evident that this waiver was the one enclosed in the letter of Mr. Fawsett, and since he was counsel for the respondent after the Chemical Company was dissolved, we believe it is clear that in procuring and forwarding the waiver Mr. Fawsett was acting for the respondent as the sole party interested with respect to the Chemical Company's taxes. The protest mailed with the waiver was verified by A. A. Schlesinger, who was president of the respondent,[9] and who stated that he was duly authorized to make the verification. (R. 51.) The waiver accompanying this protest extended the period for one year from the expiration of waivers already on file, or until April 1, 1926.

While this waiver was in effect, the Commissioner made another tentative determination of a deficiency for 1917 against the Chemical Company

[9] While the record does not show that A. A. Schlesinger was president of the respondent on December 27, 1924, when the protest was executed, it does show that he was president in 1920 (R. 68) and in 1926 (R. 60).

in the sum of $211,227.75 and notified that company thereof under date of December 14, 1925. (R. 53–54.) To this the protest of January 11, 1926, referred to in Point I of this brief (*supra*, pp. 21–24), was filed. This constituted an informal waiver of the statute by the respondent. It was verified by the respondent's president, A. A. Schlesinger, and contained a statement that "the taxpayer hereby places on record its willingness to file all required waivers to permit of the final determination" of the exceptions taken to the proposed tax. (R. 60.) A few days later the last waiver of the Chemical Company was filed, extending the period for assessment to December 31, 1926. (R. 61.)

This last waiver, together with its predecessors, was sufficient to extend the statutory period for assessment in an unbroken chain to December 31, 1926. On November 6, 1926, the respondent executed its waiver as transferee, and within the time as extended by that waiver the deficiency notice was sent.

We submit the respondent was bound by all of these waivers. Through its officers and agents it participated in procuring and filing the waivers. Each waiver was filed in connection with a protest in which the respondent participated. The waiver of November 6, 1926, which was clearly the act of the respondent, was filed in connection with a similar protest and given under the same circumstances

which prompted the giving of the earlier waivers. It was but the last link in a chain of waivers, all designed to accomplish the same purpose. The respondent was liable for the tax and was the only party interested in securing an extension of time in order that careful consideration might be had of the various protests that it had caused to be filed. Under these circumstances, the waivers procured and filed by the transferee, though executed in the name of the transferor, should bind the transferee and be given the effect they obviously sought to accomplish. See *Phillips* v. *Lyman H. Howe Films Co.*, 33 F. (2d) 891 (C.C.A. 3d), *supra; Warner Collieries Co.* v. *United States*, 63 F. (2d) 34 (C.C.A. 6th), *supra*. See also *Monarch Mills* v. *Jones*, 59 F. (2d) 502 (C.C.A. 4th).

Moreover, as a result of procuring and filing the waivers in question, the respondent was afforded repeated reconsideration of the tax liability, resulting in a reduction of the deficiency from $116,065.49, the amount determined in 1923 (R. 39–45), to $43,527.25, the amount eventually determined in the deficiency notice (R. 9). This substantial reduction operated solely for the benefit of the respondent as the only party liable for the tax. Having obtained delay in assessment, a more deliberate consideration of the question, and a reduction of the deficiency, the respondent ought not to be heard to urge the bar of the statute. See *Warner Collieries Co.* v. *United States*, 63 F. (2d) 34 (C.C.A. 6th), *supra; Lucas* v. *Hunt*, 45 F. (2d) 781 (C.C.A.

5th), *supra; Trustees for Ohio and Big Sandy Coal Co.* v. *Commissioner,* 43 F. (2d) 782 (C.C.A. 4th); *Liberty Baking Co.* v. *Heiner,* 37 F. (2d) 703 (C.C.A. 3d); *Loewer Realty Co.* v. *Anderson,* 31 F. (2d) 268 (C.C.A. 2d). And see *Heiman Grocery Co.* v. *Crooks,* 44 F. (2d) 854 (W.D.Mo.), appeal dismissed, 50 F. (2d) 1077.

The court below thought there was no estoppel (R. 164), because the Board had found as a fact that the respondent had, on numerous occasions, prior to the expiration of the statutory period of limitations, informed the Commissioner that the Chemical Company had been dissolved (R. 143). But we are not contending that the respondent is estopped to deny the existence of the Chemical Company, but rather that the respondent is estopped to contend that the waivers procured by it are not binding on it. It is obvious that the waivers were not executed for the protection of the dissolved Chemical Company. It is just as obvious that they were intended to and did benefit the respondent. The Board found as a fact that the Commissioner knew of the dissolution of the Chemical Company. Therefore, the Commissioner must have accepted the waivers with the understanding that they were intended to bind the respondent. The respondent, having procured the waivers and benefited by the filing of them, is estopped to deny that it was not bound by them. *Warner Collieries Co.* v. *United States, supra,* is particularly in point. There the Wolf Run Coal Company had trans-

ferred all its assets to the Warner Company and then dissolved. Later the former officers of the Wolf Company who were then officers of the Warner Company executed waivers in the name of the dissolved company. It was there contended, as here, that the former officers were not authorized to act for the dissolved corporation and that the waivers were, therefore, invalid. In affirming the District Court, the Circuit Court of Appeals held (p. 35):

> We are of the opinion that appellant is not in a position to raise these questions. It is obvious that the execution of the waivers by Whitworth and Warner and the proceedings before the Board of Tax Appeals were not intended for the protection of the dissolved Wolf Company. It is just as obvious that they were intended to and did benefit the Warner Company, which these officials then represented, and that the use of the corporate name and seal of the Wolf Company, acquiesced in by the Commissioner, was nominal only, and fully understood to be so by the Commissioner. Appellant cannot therefore now assume a contrary and inconsistent position at the expense of the Government.

The decision of the court below was based solely on the ground that the waivers in question were invalid because they were executed after the Chemical Company had ceased to exist pursuant to the

decree of the Maine Supreme Judicial Court. In the preceding portion of this brief we have contended that this ground is not a sufficient basis for the disposition of this case, because some of the waivers were executed by the respondent itself, and the others, even though not binding on the Chemical Company, were effective and binding on the respondent. We also contend that the decision of the Maine court is not conclusive in this Federal tax proceeding.

The limitations applicable to the collection of Federal taxes are, we submit, governed by Federal law and not by state statutes or state court proceedings. In *Colonial Trust Co.* v. *United States,* 55 F. (2d) 512 (C.Cls.), certiorari denied, 286 U.S. 560, a waiver signed by an executor was held valid although under the law of the State in which the executor was appointed, it had no authority to waive the statute of limitations. A similar result was reached in *Aldridge* v. *United States,* 64 C.Cls. 424, where the court said (pp. 431–432) that Congress:

> had the power * * * to provide not only a statute of limitations but the right to waive the limitation, and this right was given to the taxpayer. It cannot be contended that the power of Congress to confer the right can be taken away by a State statute, much less by the decision of a State court.

See also *Davis* v. *United States,* 27 F. (2d) 630 (Maine); *Dodge* v. *Commissioner,* 13 B.T.A. 201.

In *California Iron Yards Co.* v. *Commissioner*, 47 F. (2d) 514 (C.C.A. 9th), a waiver executed on behalf of a suspended California corporation was held valid, although the California law provided a criminal penalty against anyone attempting to exercise the rights or powers of any delinquent corporation, and also provided that every contract made in violation of the statute should be void. See also *Monarch Mills* v. *Jones*, 59 F. (2d) 502 (C.C.A. 4th); *Concrete Engineering Co.* v. *Commissioner*, 58 F. (2d) 566 (C.C.A. 8th). Compare *Burnet* v. *Harmel*, 287 U.S. 103, 110.

So far as transferee liability is concerned, Congress has expressly provided in Section 280 (c) of the Revenue Act of 1926 (*infra*, p. 42) that:

> For the purposes of this section, if the taxpayer is deceased, or in the case of a corporation, has terminated its existence, the period of limitation for assessment against the taxpayer shall be the period that would be in effect had the death or termination of existence not occurred.

Congress has thus declared in express terms that the termination of the existence of a corporation under state law shall not affect the time within which transferee liability for Federal taxes must be assessed. As a consequence, therefore, the question of the validity and effect of the Maine decree is, we submit, immaterial, and the waivers in question were valid regardless of that proceeding.

But even if the Maine law were controlling in a Federal tax case, we contend that the Maine decree involved here was not effective to terminate the existence of the Chemical Company. The statutes of Maine provide that the Supreme Judicial Court upon application by bill in equity may decree the dissolution of a corporation and upon dissolving such corporation shall appoint one or more trustees, but upon proof that there are *no existing liabilities* and no existing assets requiring distribution among the stockholders, the court may dissolve the corporation without the appointment of trustees or receivers. Revised Statutes of Maine, 1916, c. 51, Sections 89, 90 (pp. 44–45, *infra*). Here the bill of the Chemical Company's stockholders recited that *there were* existing liabilities and no existing assets. (R. 19.) The corporation's answer admitted all the averments of the bill. (R. 20.) The decree recited that the cause was heard upon bill and answer, but, nevertheless, it was ordered that the corporation should be dissolved without the appointment of a trustee or receiver. (R. 21.) There was thus no provision made for the appointment of any person to collect or administer any corporate funds for the benefit of creditors despite the fact that it appeared on the face of the record that there were existing liabilities.

It would seem that under these circumstances the court had no jurisdiction or power to enter a decree of dissolution without the appointment of

trustees. It is made by statute a condition precedent to such a decree that there shall be no existing liabilities, and the record of the proceedings discloses on its face that the jurisdictional prerequisites for the decree were lacking. Where it appears that facts necessary for jurisdiction were absent, the judgment of a court is void and may be collaterally attacked. See *Thompson* v. *Whitman,* 18 Wall. 457; *Williamson* v. *Berry,* 8 How. 495; *Old Wayne Life Assn.* v. *McDonough,* 204 U.S. 8; *Simon* v. *Southern Railway,* 236 U.S. 115, 126–128. The same is true when it appears that the court did not have jurisdiction to grant the particular remedy which was given or where the remedy granted was without the scope of the prayer. See *Glover* v. *Brown,* 32 Idaho 426; *Sache* v. *Wallace,* 101 Minn. 169; *Cushman* v. *Warren-Scharf Asphalt Paving Co.,* 220 Fed. 857, 861 (C.C.A. 7th), certiorari denied, 238 U.S. 621. Likewise the judgment is void and subject to collateral attack where the court has jurisdiction of the subject matter and the parties but enters a judgment outside the power granted by law. See *United States* v. *Walker,* 109 U.S. 258, 266–267; *Bigelow* v. *Forrest,* 9 Wall. 339; *Windsor* v. *McVeigh,* 93 U.S. 274, 282–283.

Since the Maine court transcended in the extent and character of its decree the law which was applicable to it, the decree was void and ineffective to accomplish a dissolution. The failure to appoint a trustee or receiver is more than a mere procedural

defect. We submit, as the court held in *In re Wolf Mfg. Industries,* 56 F. (2d) 64, 66 (C.C.A. 7th), that

> if the corporation does not comply with the statute, so far as the rights of third persons are concerned, the dissolution is inoperative and void.

The present case is strikingly similar to *Elston* v. *Elston & Co.,* 131 Maine 149, recently decided by the Supreme Judicial Court of Maine, where it was held that a dissolution obtained under circumstances almost identical with those involved here was properly set aside at the instance of a creditor many years after the three years following the purported dissolution had elapsed.

CONCLUSION

The waivers involved were binding on the respondent and were effective to extend the statutory period for assessment so that assessment was not barred when the deficiency notice was mailed. The decision of the Circuit Court of Appeals should be reversed.

Respectfully submitted.

J. CRAWFORD BIGGS,
Solicitor General.
ERWIN N. GRISWOLD,
SEWALL KEY,
J. P. JACKSON,
Special Assistants to the Attorney General.

JANUARY, 1934.

APPENDIX

Revenue Act of 1926, c. 27, 44 Stat. 9:

SEC. 274. (a) If in the case of any taxpayer, the Commissioner determines that there is a deficiency in respect of the tax imposed by this title, the Commissioner is authorized to send notice of such deficiency to the taxpayer by registered mail. Within 60 days after such notice is mailed (not counting Sunday as the sixtieth day), the taxpayer may file a petition with the Board of Tax Appeals for a redetermination of the deficiency. Except as otherwise provided in subdivision (d) or (f) of this section or in section 279, 282, or 1001, no assessment of a deficiency in respect of the tax imposed by this title and no distraint or proceeding in court for its collection shall be made, begun, or prosecuted until such notice has been mailed to the taxpayer, nor until the expiration of such 60-day period, nor, if a petition has been filed with the Board, until the decision of the Board has become final. Notwithstanding the provisions of section 3224 of the Revised Statutes the making of such assessment or the beginning of such proceeding or distraint during the time such prohibition is in force may be enjoined by a proceeding in the proper court. (U.S.C. App., Title 26, Sec. 1048.)

SEC. 277. (a) Except as provided in section 278—

* * * * *

(3) The amount of income, excess-profits, and war-profits taxes imposed by the Act entitled "An Act to provide revenue, equalize duties, and encourage the industries of the United States and for other purposes," approved August 5, 1909, the Act entitled "An Act to reduce tariff duties and to provide revenue for the Government, and for other purposes," approved October 3, 1913, the Revenue Act of 1916, the Revenue Act of 1917, the Revenue Act of 1918, and by any such Act as amended, shall be assessed within five years after the return was filed, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period.

* * * * *

(b) The running of the statute of limitations provided in this section or in section 278 on the making of assessments and the beginning of distraint or a proceeding in court for collection, in respect of any deficiency, shall (after the mailing of a notice under subdivision (a) of section 274) be suspended for the period during which the Commissioner is prohibited from making the assessment or beginning distraint or a proceeding in court, and for 60 days thereafter. (U.S.C. App., Title 26, Sec. 1057.)

* * * * *

SEC. 278. (c) Where both the Commissioner and the taxpayer have consented in writing to the assessment of the tax after the time prescribed in section 277 for its assessment the tax may be assessed at any time prior to the expiration of the period agreed upon. (U.S.C. App., Title 26, Sec. 1060.)

SEC. 280. (a) The amounts of the following liabilities shall, except as hereinafter in this section provided, be assessed, collected, and paid in the same manner and subject to the same provisions and limitations as in the case of a deficiency in a tax imposed by this title (including the provisions in case of delinquency in payment after notice and demand, the provisions authorizing distraint and proceedings in court for collection, and the provisions prohibiting claims and suits for refunds):

(1) The liability, at law or in equity, of a transferee of property of a taxpayer, in respect of the tax (including interest, additional amounts, and additions to the tax provided by law) imposed upon the taxpayer by this title or by any prior income, excess-profits, or war-profits tax Act.

* * * * *

(b) The period of limitation for assessment of any such liability of a transferee or fiduciary shall be as follows:

(1) Within one year after the expiration of the period of limitation for assessment against the taxpayer; or

* * * * *

(c) For the purposes of this section, if the taxpayer is deceased, or in the case of a corporation, has terminated its existence, the period of limitation for assessment against the taxpayer shall be the period that would be in effect had the death or termination of existence not occurred.

(d) The running of the period of limitation upon the assessment of the liability of a transferee or fiduciary shall, after the mailing of the notice under subdivision (a) of

section 274 to the transferee or fiduciary, be suspended for the period during which the Commissioner is prohibited from making the assessment in respect of the liability of the transferee or fiduciary, and for 60 days thereafter. (U.S.C. App., Title 26, Sec. 1069.)

* * * * *

SEC. 283. (a) If after the enactment of this Act the Commissioner determines that any assessment should be made in respect of any income, war-profits, or excess-profits tax imposed by the Revenue Act of 1916, the Revenue Act of 1917, the Revenue Act of 1918, the Revenue Act of 1921, or the Revenue Act of 1924, or by any such Act as amended, the Commissioner is authorized to send by registered mail to the person liable for such tax notice of the amount proposed to be assessed, which notice shall, for the purposes of this Act, be considered a notice under subdivision (a) of section 274 of this Act. In the case of any such determination the amount which should be assessed (whether as deficiency or as interest, penalty, or other addition to the tax) shall, except as provided in subdivision (d) of this section, be computed as if this Act had not been enacted, but the amount so computed shall be assessed, collected, and paid in the same manner and subject to the same provisions and limitations (including the provisions in case of delinquency in payment after notice and demand and the provisions prohibiting claims and suits for refund) as in the case of a deficiency in the tax imposed by this title, except as otherwise provided in section 277 of this Act. (U.S.C. App., Title 26, Sec. 1064.)

* * * * *

SEC. 1106. (a) The bar of the statute of limitations against the United States in respect of any internal-revenue tax shall not only operate to bar the remedy but shall extinguish the liability; but no credit or refund in respect of such tax shall be allowed unless the taxpayer has overpaid the tax. The bar of the statute of limitations against the taxpayer in respect of any internal-revenue tax shall not only operate to bar the remedy but shall extinguish the liability; but no collection in respect of such tax shall be made unless the taxpayer has underpaid the tax. (U.S.C. App., Title 26, Sec. 1249.)

Revenue Act of 1928, c. 852, 45 Stat. 791, 875:

SEC. 612. REPEAL OF SECTION 1106 (a) of 1926 ACT. Section 1106 (a) of the Revenue Act of 1926 is repealed as of February 26, 1926.

Revised Statutes of Maine (1916), c. 51:

SEC. 81. *Existence after charter expires.* R.S., c. 47, § 77. Corporations, whose charters expire or are otherwise terminated, have a corporate existence for three years thereafter; to prosecute and defend suits; to settle and close their concerns; to dispose of their property; and to divide their capitals.

SEC. 89. *Bill in equity against corporations for dissolution; if no liabilities, dissolution may be had without trustees.* R.S., c. 47, § 80. Except where otherwise provided by statute, whenever at any meeting of its stockholders; legally called therefor, such stockholders vote to dissolve such corporation, a bill in equity against the same for dissolution thereof, may be filed by any officer, stockholder or creditor in the supreme judicial court, in the county in which it has an established place of business, or in which it

held its last stockholders' meeting; upon said bill, such notice shall be given as may be ordered by any justice of said court, in term time or vacation, and upon proof thereof, such proceedings may be had according to the usual course of suits in equity, that said corporation shall be dissolved and terminated. Upon proof that there are no existing liabilities against said corporation, and no existing assets thereof, requiring distribution among the stockholders, said court may dissolve said corporation without the appointment of trustees or receivers.

SEC. 90. *Jurisdiction of court; court may superintend collection and distribution of assets.* R.S. c. 47, § 81. Said court has jurisdiction in said cause to appoint receivers, issue injunctions, and pass interlocutory decrees and orders, according to the usual course of proceedings in equity; and shall, moreover, upon dissolving said corporation, or upon terminating its charter, appoint one or more trustees, who shall have all the powers conferred upon similar trustees by sections eighty-one, eighty-eight and ninety eight, or by any other law of the state, with such special powers as may be given them by said court. But, notwithstanding the appointment of such trustees, said court may superintend the collection and distribution of the assets of said corporation, and may retain said bill for that purpose.

SEC. 101. *Capital not be divided until debts paid.* R.S. c. 47, § 92. Corporations, not created for literary, benevolent or banking purposes, shall not so divide any of their corporate property as to reduce their stock below its par value, until all debts are paid, and then only for the purpose of closing their concerns.

U. S. GOVERNMENT PRINTING OFFICE: 1934